

EXHIBIT 1

Deposition	Plaintiffs' Designation	Defendants' Corresponding Counter Designation	Reason that Defendants' Counter Designation Must be Considered According to Fed.R.Civ.P 32(a)(4)
Michael Baksa, March 9, 2005	39:7-41:8	39:7-41:8	Testimony designated by both parties all relates to a specific memo from Dr. Peterman (Plaintiffs previously objected to this section of Defendants' counter designation, but in Plaintiffs' new designations sent 10/10/05, they have also included this section)
	137:23-138:4	138:5-9, 19-25	Counter designation is the response to the question asked in Plaintiffs' designation
	144:13-18, 146:5-17, 147:6-15	149:7-150:16	Testimony designated by Defendants is part of an uninterrupted line of questioning regarding scientific theory designated by Plaintiffs

In The Matter Of:

*Tammy Kitzmiller, et al. v.
Dover Area School District, et al.*

*Michael Baksa
March 9, 2005*

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Min-U-Script® File ID: 1831012083*

Word Index included with this Min-U-Script®

[1] Q: After June or it could have been in June?
 [2] A: It could have been in June, yeah.
 [3] Q: Do you remember the circumstances in which you
 [4] heard about intelligent design? Was it, for
 [5] example, a public school board meeting, a
 [6] discussion with a school board member or
 [7] otherwise?

[8] A: I don't.

[9] Q: Do you remember anything about the substance of
 [10] what you heard the first time you heard about
 [11] it?

[12] A: No.

[13] Q: The first time you heard about it, was it in
 [14] the context of the Dover Area High School
 [15] biology curriculum?

[16] A: I don't remember that.

[17] Q: When was the first time you heard of the book
 [18] Of Pandas and People?

[19] A: When Bill gave it to me, Mr. Buckingham.

[20] MR. ROTHSCHILD: Let me mark this document
 [21] as P-9.

[22] (P Deposition Exhibit Number 9 marked for
 [23] identification.)

BY MR. ROTHSCHILD:

[24] Q: Do you recognize the document we've marked as

[1] P-9?

[2] A: Yes.

[3] Q: Is this a memorandum that you received on or
 [4] around April 1st, 2003 from the principal,
 [5] Trudy Peterman?

[6] A: Yes.

[7] Q: Could you review this document and let me know
 [8] whether there's anything in it that you —
 [9] well, review the document and let me know
 [10] whether there's anything in it you think is
 [11] incorrect.

[12] A: Okay. There are a number — just the first two
 [13] pages or do you want me to do the rest?

[14] Q: I think we can probably just look at the first
 [15] two pages for purposes of my question.

[16] A: There are a number of errors and inaccuracies.

[17] Q: Could you describe them?

[18] A: First, Trudy — Dr. Peterman was not at the
 [19] meeting — was not at the — or was not present
 [20] when I had a conversation with Mrs. Spahr that
 [21] generated this memo.

[22] I never told Mrs. Spahr that the board
 [23] wanted creationism taught. Dr. Peterman in
 [24] many instances overreacts to instances and
 [25] jumps the gun and I think this is a good

[1] example of that.

[2] My conversation with Bert Spahr was simply
 [3] a heads up that there was still, you know, some
 [4] talk about some board members of presenting
 [5] some alternative theory. I did not say that
 [6] there was creationism, nor did any board member
 [7] ever say to me that they wanted creationism
 [8] taught in the classroom.

[9] Additionally, she talks about creationism
 [10] should still be — Dr. Peterman says I advise
 [11] and continue to mention that creationism is
 [12] another alternate theory of evolution. That's
 [13] Dr. Peterman acting on her own.

[14] The only information I have is that I did
 [15] know that some of our teachers before teaching
 [16] the evolution unit would mention other
 [17] theories. They might mention creationism, but
 [18] there was no — at this point there was no
 [19] directive from the board or administration for
 [20] them to do so.

[21] So the way I reacted to this is I ignored
 [22] this because the board was not putting forth
 [23] any definite plans or content or curriculum to
 [24] be implemented.

[25] Mr. Bonsell at a board retreat, where

[1] there's administrators all around, had, just in
 [2] talking about something, mentioned this 50/50.
 [3] He did not talk to me personally about that,
 [4] nor direct that to happen. And I simply took
 [5] that back to Bert Spahr just to give her a
 [6] heads up that there are board members that are
 [7] still looking at alternatives that are being
 [8] presented.

[9] Q: You've got a lot packaged in here. First of
 [10] all, you said ignored this. Can I take from
 [11] that that you did not respond to Ms. Peterman?

[12] A: Correct.

[13] Q: Verbally or in writing?

[14] A: Correct.

[15] Q: Did you have any follow-up conversation with
 [16] Ms. Spahr in reaction to this memo?

[17] A: That I don't remember, but I would be talking
 [18] to Mrs. Spahr continually anyway as long as
 [19] there was some interest in presenting
 [20] alternative theories and since we were working
 [21] on the science curriculum.

[22] Q: This is a memo from April 1st, 2003 and you
 [23] said — the way you started your answer was
 [24] that there was still some talk about presenting
 [25] an alternative theory. What do you mean still

[1] some talk? Had there been talk prior to April
[2] 1st, 2003 about teaching something different in
[3] the biology curriculum?
[4] A: During the first year of the science curriculum
[5] cycle Mr. Bonsell was the chair of the board
[6] curriculum committee and Mr. Bonsell had
[7] expressed concerns about the presentation of
[8] Darwin's theory in the book and the lack of
[9] alternative theories.
[10] Q: And do you remember, you know, using this April
[11] 1st, 2003 as a marker, when he was raising this
[12] issue?
[13] A: I remember it being in the fall, early in the
[14] 2002 school year.
[15] Q: Now, you said that at a board retreat he raised
[16] the concept of 50/50. Is this a retreat that
[17] you were at?
[18] A: Yes.
[19] Q: And when he used the word 50/50, what was he
[20] referring to?
[21] A: I believe Mr. Bonsell was referring that if we
[22] spent a day teaching Darwin's theory we should
[23] spend a day teaching another theory.
[24] Q: When he said that, what was he talking about?
[25] MR. GILLEN: Objection to the extent it

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[1] other theories out there.
[2] When I heard this 50/50, that was
[3] something new, I hadn't heard that before. I
[4] do remember having a conversation with him
[5] afterwards trying to clarify that a little bit.
[6] However, in that conversation Mr. Bonsell
[7] indicated to me just some of his concerns with
[8] the presentation of Darwin in the book and some
[9] of the premises that students might be led to.
[10] No alternative theory was presented to me by
[11] Mr. Bonsell.
[12] I had raised the question that if we're
[13] presenting an alternative theory and if that
[14] theory is about the origins of life it becomes
[15] problematic because whose theory would we
[16] present and whose story of the origins of life
[17] would we present. And I never got anything
[18] directly back from him that this is what we
[19] should be presenting.
[20] Q: And when he was using the word other theories,
[21] did he say other scientific theories?
[22] A: I don't remember.
[23] Q: Did you understand him to be referring to other
[24] scientific theories?
[25] A: Well, he was speaking about other theories of

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[1] calls for speculation.
BY MR. ROTHSCHILD:
[3] Q: What was your understanding of what he was
[4] talking about?
MR. GILLEN: Objection, foundation.
BY MR. ROTHSCHILD:
[7] Q: You can answer.
[8] A: I don't know.
[9] Q: So he says 50/50 one theory and something else
[10] and you have no idea what he's talking about?
A: That's correct.
Q: And he's not using the words intelligent design
here?
A: No.
Q: But in your memory, he also did not use the
word creation?
A: That's correct.
Q: You're sitting here listening to this and you
have responsibility for a curriculum. Did you
ask Mr. Bonsell what other possible theories
are you talking about?
A: I did have a conversation with him after that.
Initially I think his concern was just that our
teachers don't present Darwin's theory as the
sole theory, make students aware that there are

[1] evolution, Darwin's scientific evolution. So
[2]
[3] Q: But what else is there and did you ask him that
[4] question?
A: No.
Q: You said that he expressed his concerns about
some of the premises that students could draw
from what they were being taught about Darwin's
theory of evolution. What do you mean by that?
A: Mr. Bonsell expressed concerns that Darwin's
theory was presented in the book as a fact and
as the only theory.
Q: And why did he have a problem with that?
MR. GILLEN: Objection, speculation.
BY MR. ROTHSCHILD:
Q: Did he say why he had a problem with that?
A: No.
Q: You did communicate — I take it this memo is
correct in referring to the fact that you
communicated to Ms. Spahr issues being raised
by a board member. Is that fair?
A: Yes.
Q: And was that board member Mr. Bonsell?
A: Yes.
Q: And what did you tell Mrs. Spahr?

[1] A: I really don't recall. I don't think it was a
 [2] long conversation. I really don't remember it
 [3] clearly.

[4] I believe I simply gave her a heads up
 [5] that now I had heard that there might — that
 [6] Mr. Bonsell might be asking for a 50/50 split.
 [7] Really my intent was just to keep her informed,
 [8] to keep her in the loop and let her know that
 [9] at some point, whenever the board would give us
 [10] clear direction about what they might want
 [11] done, we may need to look at that and may need
 [12] to do something.

[13] Q: How did Mrs. Spahr respond to that?
 [14] A: Mrs. Spahr was throughout this, from the very
 [15] first instance where she would have heard of
 [16] board concerns with the presentation of
 [17] Darwin's theory is the only theory, I think
 [18] from the very beginning Mrs. Spahr was very
 [19] concerned that creationism would be required to
 [20] be taught in classrooms.

[21] Q: And did she express that to you in this
 [22] discussion in which you reported Mr. Bonsell's
 [23] comments?

[24] A: I don't remember in particular, but Mrs. Spahr
 [25] expressed that concern to me on a number of

[1] Did any board member or the board
 [2] collectively ever ask you or express an
 [3] interest in purchasing a biology book that
 [4] included creationism?

[5] A: No board member ever said that to me directly.

[6] Q: You used the word directly. Why did you say
 [7] that?

[8] A: I believe at the June, 2004 school board
 [9] meeting in talking about our status of the
 [10] selection of the biology book, for the first
 [11] time I believe in — I don't remember the exact
 [12] wording, but I remember Mr. Buckingham
 [13] mentioned creationism and that was the first
 [14] time I heard that. But afterwards I was never
 [15] directed from the board curriculum committee or
 [16] from Mr. Buckingham specifically to look for a
 [17] text with creationism in it.

[18] Q: Without, you know, expecting you to precisely
 [19] quote Mr. Buckingham, what do you remember him
 [20] saying about creationism?

[21] A: I just remember that he said creationism.

[22] Q: Did he say anything about wanting a biology
 [23] text that included creationism?

[24] A: I don't remember that.

[25] Q: You recognize Ms. Callahan, who's in the room?

[1] occasions.

[2] Q: When you heard Mr. Bonsell say that he wanted
 [3] some 50/50 split did you have a concern that
 [4] what he wanted taught alongside Darwin's theory
 [5] was creationism or some religious account of
 [6] the origins of life?

[7] A: I don't know. I mean, I didn't know what his
 [8] intentions were.

[9] Q: And just to make sure I understand your answer.
 [10] After you received this memo, you didn't
 [11] respond to Ms. Peterman, correct?

[12] A: Yes.

[13] Q: Do you have any recollection of speaking to Ms.
 [14] Spahr, who also received this memo, about what
 [15] Mrs. Peterman had written about her
 [16] understanding of what you and Ms. Spahr talked
 [17] about?

[18] A: I don't remember doing that.

[19] MR. ROTHSCHILD: Let's take a break.
 [20] (Recess taken)

BY MR. ROTHSCHILD:

[21] Q: Mr. Baksa, I asked you the question earlier in
 [22] the deposition about whether any board member
 [23] had expressed his desire that creationism be
 [24] taught at Dover schools and you said no.

[1] A: Yes.

[2] Q: And you understand she's one of the plaintiffs
 [3] in this lawsuit?

[4] A: Yes.

[5] Q: Do you remember ever saying to her that the
 [6] board members — the board wanted a biology
 [7] text that included creationism?

[8] A: No.

[9] Q: I'm going to mark another exhibit as P-10.
 [10] (P Deposition Exhibit Number 10 marked for
 [11] identification.)

BY MR. ROTHSCHILD:

[13] Q: You see that on P-10 —

[14] A: Which one?

[15] Q: There's two pages of P-10 and on each page
 [16] there are some handwritten notes that appear to
 [17] say "Given to me by Baksa spring 2004". Do you
 [18] recognize —

[19] MR. GILLEN: Objection, hearsay. Go
 [20] ahead.

BY MR. ROTHSCHILD:

[22] Q: Do you recognize the handwriting on these two
 [23] pages?

[24] A: No.

[25] Q: Do you recognize the documents?

[1] tentative language for the curriculum that
 [2] everyone agreed on. I did have my secretary
 [3] enter that language into the draft curriculum
 [4] guide and then it was put on hold, because what
 [5] happened, in the meantime the agreement here
 [6] was that Mr. Buckingham would be okay with the
 [7] books if those two policies were looked at by
 [8] Mrs. Brown and this curriculum language came
 [9] in.

[10] Shortly after this meeting Mr. Buckingham
 [11] withdrew his approval of the books. So in my
 [12] mind everything was off the table, we were back
 [13] to square one on, okay, how do we proceed to
 [14] answer additional concerns. So I did nothing
 [15] with this.

[16] Q: And then what happened after that as regards
 [17] the purchase of the biology book and the
 [18] biology curriculum? So walk me through
 [19] chronologically.

[20] A: After that — well, there's another meeting in
 [21] July.

[22] Q: I have notes here at Page 58. Are those notes
 [23] from that meeting?

[24] A: No, that's an August, 2004 meeting, 58.

[25] Q: Do you know if there are notes from a July

[1] issue of changing the biology curriculum?
 [2] A: No. Then the next thing, without a July
 [3] meeting, the next thing that would have
 [4] happened is there was a meeting at the end of
 [5] August with the teachers when they came back to
 [6] discuss the use of the Panda book.

[7] And at that meeting Dr. Nilsen — I was
 [8] away from the end of July till like the middle
 [9] of August. So this meeting — the meeting for
 [10] the end of August was set up by Dr. Nilsen.

[11] And at that meeting Dr. Nilsen presented
 [12] the draft of the curriculum language from the
 [13] meeting on 6/24. And at that meeting Mrs.
 [14] Spahr expressed surprise that intelligent
 [15] design was in there.

[16] Q: And you were at this meeting, the August
 [17] meeting?

[18] A: Yes, yes.

[19] Q: Are the notes that we have here on Page 58, are
 [20] those notes from that meeting?

[21] A: Yes. So what was decided then, Mrs. Spahr was
 [22] saying, no, we didn't agree to this, this isn't
 [23] language that we would recommend. So out of
 [24] this meeting the board curriculum committee
 [25] then directed me to work with the teachers to

[1] meeting?

[2] A: Yeah. Oh, no, there isn't a meeting in July,
 [3] is there? The first meeting in June presented
 [4] the textbooks. I don't think there was a
 [5] meeting in July.

[6] Q: Okay. Of the curriculum committee?

[7] A: Right.

[8] Q: And just —

[9] A: But if there was a meeting there would be
 [10] notes.

[11] Q: Okay. And just to try and put, you know, some
 [12] time frames on this. August 2nd is the meeting
 [13] — the full school board meeting at which the
 [14] Miller Levine book is voted in, there's some
 [15] back and forth votes, because I think there's
 [16] only eight people there, not nine and it's four
 [17] to four and then eventually the votes change
 [18] and the Miller Levine book is voted in. Do you
 [19] remember that?

[20] A: Yes.

[21] Q: So from this June 24th meeting till August 2nd
 [22] are there any meetings of the board curriculum
 [23] committee?

[24] A: No, I don't think so.

[25] Q: In this time period is there any action on the

[1] draft new language.

[2] Q: Were you surprised that Ms. Spahr took the
 [3] position she did about the intelligent design
 [4] language?

[5] A: Yes.

[6] Q: You had understood from the June meeting that
 [7] she had signed on to that language?

[8] A: Yes.

[9] Q: Did she explain why she was opposed to that
 [10] language?

[11] A: I remember her just making a point that we were
 [12] never — teachers were never consulted about
 [13] this and I was surprised at that because that
 [14] was the topic of the June meeting.

[15] Q: Did she discuss the topic of intelligent design
 [16] substantively in terms of, you know, what she
 [17] thought about it?

[18] A: I don't believe so.

[19] Q: Did anybody at that meeting in August make the
 [20] case for why intelligent design should be part
 [21] of the curriculum?

[22] A: No.

[23] Q: And am I correct in understanding that from a
 [24] substantive level in terms of sort of
 [25] explaining why intelligent design belongs in

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[1] the curriculum, nobody has ever done that in
 [2] any meetings of the board or the board
 [3] curriculum committee?

[4] A: Nobody has —

[5] Q: Said here's why we should present intelligent
 [6] design to the students.

[7] A: Intelligent design was suggested just to be as
 [8] an example of one of the other theories,
 [9] alternative theories other than Darwin's.

[10] Q: Mr. Baksa, I could suggest that another theory
 [11] of the development of species is they were all
 [12] made out of playdough, right, I mean I could
 [13] say that, right, and you would agree with me
 [14] that that's a scientifically unsound

[15] proposition? Is that fair?

[16] A: Are we talking about playdough now?

[17] Q: I'm not talking about the philosopher. I'm
 [18] talking about the stuff that's like clay.

[19] A: In the discussions about language that we would
 [20] use, intelligent design was brought up as when
 [21] we're making students generally aware of other
 [22] theories, intelligent design was brought up as
 [23] an example. And I don't remember presenting it
 [24] in that way that being challenged. I think
 [25] that was generally accepted.

[1] Q: Okay. But I assume that when you're trying to
 [2] develop science curriculum you're actually —
 [3] and you're making students aware of other
 [4] theories you're trying to make them aware of
 [5] scientific theories, correct?

[6] A: Yes. And it was my understanding at the June
 [7] meeting that the teachers were okay with
 [8] language that included intelligent design. So
 [9] I would have — again, my goal was to try to
 [10] come to some agreement between the concerns of
 [11] the board and the language teachers could live
 [12] with. So I thought we — that was acceptable
 [13] to them.

[14] Q: Okay. But at that June meeting nobody
 [15] explained what intelligent design was or what
 [16] its status was in the scientific community at
 [17] large or anything like that?

[18] A: I don't remember any of them doing that.

[19] Q: And that never happened after that either,
 [20] correct, as far as you know?

[21] A: Yes.

[22] Q: I'm correct?

[23] A: You're correct.

[24] Q: And originally it was your understanding that
 [25] the science teachers were okay with this

[1] language, but in August it turned out that
 [2] regardless of what they had said before,
 [3] they're not okay with it?

[4] A: Correct.

[5] Q: And other than Ms. Spahr indicating that the
 [6] teachers hadn't been consulted and didn't agree
 [7] with this, did she explain what's wrong with
 [8] intelligent design?

[9] A: Mrs. Spahr from the very beginning, from
 [10] documents 897, which include reference to
 [11] intelligent design, in my conversations with
 [12] Mrs. Spahr she made no distinction between
 [13] intelligent design and creationism. For her
 [14] they were synonymous.

[15] Q: And did she explain why she held that view?

[16] A: From her research that she had done she felt
 [17] that legally we would not be able to teach
 [18] intelligent design because it's just

[19] creationism.

[20] Q: And did she express that view at either this
 [21] June board meeting or — the June curriculum
 [22] committee meeting or the August curriculum
 [23] committee meeting?

[24] A: I know she did to me. I'm not sure if she did
 [25] at either of those other meetings.

[1] Q: In these notes from this August meeting on Page
 [2] 58 it says, Call Russell - did they say what
 [3] schools are using it.

[4] Did you make an inquiry to the solicitor
 [5] about whether other schools were using this
 [6] textbook?

[7] A: We did ask our solicitor to see if there were
 [8] any other schools using the book, to give us an
 [9] opinion on its use as a classroom set or to
 [10] distribute it to each individual student, if
 [11] there were any cases involving the teaching of
 [12] intelligent design and also asked for a
 [13] specific law firm's history.

[14] Q: And was that the Thomas More Law Center?

[15] A: I think so, yes.

[16] Q: In terms of finding out whether other schools
 [17] used it, did you get an answer to that
 [18] question?

[19] A: The only school that I found — that came to my
 [20] attention that used it was Tomball.

[21] Q: Did you also make a call to anybody at Liberty
 [22] University relating to intelligent design or
 [23] Pandas, a Dr. Gillen maybe?

[24] A: Yes. Dr. Gillen taught at Tomball.

[25] Q: In the answers to interrogatories it says that

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[1] you consulted with Dr. Gillen, believed to be
 [2] currently at Liberty University, regarding use
 [3] of Pandas and People in connection with
 [4] instruction in high school biology.

[5] A: Right.

[6] Q: What was the reason you called Mr. Gillen?

[7] A: To find out how he used the Pandas and People
 [8] book in the classroom.

[9] Q: And was the reason you called him because he
 [10] had previously been involved at Tomball?

[11] A: Yes.

[12] Q: So it's not because he's at Liberty?

[13] A: Right.

[14] Q: It's just because he's involved with Tomball?

[15] A: That's correct.

[16] Q: Then about three-quarters of the way down the
 [17] page there's a line that starts with Alan.

[18] Could you tell me what — I assume that's a
 [19] reference to something Alan Bonsell said?

[20] A: Yeah, those are my notes. Here I think Alan is
 [21] asking that something be put into the
 [22] curriculum, that teachers teach holes in
 [23] Darwin's theory and that it's not only not
 [24] flawless, but also that the teachers show the
 [25] flaws.

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[1] Q: And then what does it say after that?
 [2] A: The next line?
 [3] Q: Yes.
 [4] A: That's Sheila buying Rich lunch anyway, which
 [5] has nothing to do with anything.
 [6] Q: Who's Rich?
 [7] A: Dr. Nilsen.
 [8] Q: And what was the upshot of this meeting in
 [9] terms of developing curriculum?
 [10] A: After this meeting I was to work with the
 [11] teachers and develop a draft and then send that
 [12] to the board for their review.
 [13] Q: And was the understanding that you would
 [14] develop a draft along the lines of what Alan
 [15] Bonsell had suggested?
 [16] A: Yes.
 [17] Q: Was there any understanding of whether
 [18] intelligent design was going to be mentioned in
 [19] that curriculum — in the curriculum?
 [20] A: Well, my first step was to produce a draft with
 [21] the teachers. So I would take their draft and
 [22] show it to the board and then the board would
 [23] work on a draft of their own that included the
 [24] language. So what was going to be put in there
 [25] at this point wasn't determined.

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[1] Q: And there was no instruction or recommendation
 [2] to the board about whether intelligent design
 [3] would or would not be included?
 [4] A: Not at this meeting.
 [5] Q: Evolution is only one of the scientific
 [6] concepts that's taught to Dover High School
 [7] students, correct?
 [8] A: Yes.
 [9] Q: And there's many other concepts in biology and
 [10] there's many other concepts in other science
 [11] classes, right?
 [12] A: Yes.
 [13] Q: And evolution is generally considered a
 [14] scientific theory, correct?
 [15] A: Yes.
 [16] Q: And there are other scientific theories that
 [17] are also taught to students, correct?
 [18] A: Yes.
 [19] Q: So far as you know, does evolution — is
 [20] evolution any more — have any less status in
 [21] the scientific community or is it known to have
 [22] more problems than other scientific theories
 [23] which are taught to students in Dover?
 [24] A: I think evolution in public schools is
 [25] generally known to be controversial and

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[1] Q: And then what does it say after that?
 [2] A: The next line?
 [3] Q: Yes.
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 [5] has nothing to do with anything.
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 [13] Q: And was the understanding that you would
 [14] develop a draft along the lines of what Alan
 [15] Bonsell had suggested?
 [16] A: Yes.
 [17] Q: Was there any understanding of whether
 [18] intelligent design was going to be mentioned in
 [19] that curriculum — in the curriculum?
 [20] A: Well, my first step was to produce a draft with
 [21] the teachers. So I would take their draft and
 [22] show it to the board and then the board would
 [23] work on a draft of their own that included the
 [24] language. So what was going to be put in there
 [25] at this point wasn't determined.

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[1] sensitive.
 [2] Q: And why is that? Is it because of scientific
 [3] deficiencies or because — well, what's your
 [4] understanding of why it's sensitive and
 [5] controversial?
 [6] A: I don't know.
 [7] Q: Do you know whether its sensitivity and
 [8] controversy arises out of the fact that it is
 [9] perceived to be inconsistent with some people's
 [10] religious beliefs?
 [11] A: Could you ask that again? I mean, I'm aware of
 [12] generally evolution being a theory in public
 [13] schools that typically is questioned by parents
 [14] and students, feeling that the theory is not a
 [15] fact and may not be the way things occur.
 [16] What I'm not aware of, what specifically
 [17] might motivate any individual to make that.
 [18] I'm just generally aware that people are
 [19] sensitive to the theory of evolution and what
 [20] it proposes.
 [21] Q: Do you have an understanding of what the word
 [22] theory means in science?
 [23] A: Roughly.
 [24] Q: And what's that understanding?
 [25] A: And that would be from my work in drafting the

[1] statement that was read to students in the
 [2] biology classes, that a theory in science is a
 [3] general conclusion or assumption drawn after
 [4] observation.

[5] Q: And, you know, the students are being taught
 [6] it's a theory, not a fact. And that language
 [7] is not being used for any other theory that's
 [8] being taught to Dover students, correct? The
 [9] curriculum hasn't changed so that students are
 [10] told that germ theory is a theory, not a fact,
 [11] or the theory of gravity is a theory, not a
 [12] fact, or atomic theory is a theory not a fact.
 [13] Right?

[14] A: That's correct.

[15] Q: Only evolution is being singled out. Is that
 [16] fair?

[17] A: That's correct.

[18] Q: Has anybody in the board ever communicated why
 [19] of all the scientific concepts being taught to
 [20] Dover students evolution is being singled out
 [21] for the qualification that it's a theory, not a
 [22] fact?

[23] A: Not to me.

[24] Q: And in your understanding of the scientific
 [25] terms of theory and fact, could a scientific

[1] theory ever graduate to a fact?

[2] A: I have no idea in the scientific world what
 [3] qualifies something to move from one stage to
 [4] another or even what the definition of either
 [5] of them might be in the scientific world.

[6] Q: Did any school board member ever explain why
 [7] they wanted language that it was a theory, not
 [8] a fact?

[9] A: Nothing other than they felt that that was an
 [10] erroneous presentation in the textbook, to
 [11] present it as such.

[12] Q: What was erroneous?

[13] A: That it was being presented as a fact when, in
 [14] fact, it's a theory that still hasn't been
 [15] ultimately proven to be a fact.

[16] Q: In all the page sites that school board members
 [17] called to your attention did they ever show you
 [18] text in the textbook that was adopted in which
 [19] evolution was called a fact, not a theory?

[20] MR. GILLEN: Objection to the
 [21] characterization of his testimony to the extent
 [22] it implies more than one board member did that.

[23] Answer, Mike.

[24] A: Could you —

BY MR. ROTHSCHILD:

[1] Q: Did any school board member ever pick up this
 [2] textbook and say, look, in here it says that
 [3] evolution is a fact, not a theory or it's a
 [4] fact and a theory? Is there any text that they
 [5] pointed you to that made that assertion?

[6] A: I don't remember specific pages, but I do think
 [7] I remember both Mr. Bonsell — I know for sure
 [8] Mr. Bonsell felt that there was language in
 [9] there — I remember him saying that there was
 [10] talk about evolution without saying it's a
 [11] theory, that they were omitting the word
 [12] theory. So he felt that strengthened the case
 [13] to present it as a fact. And Mr. Bonsell would
 [14] have been looking at the edition before the
 [15] 2002.

[16] Q: But that wouldn't really matter for the
 [17] curriculum item you developed because the
 [18] edition you were using was the 2004 edition,
 [19] correct?

[20] A: In August, yes.

[21] Q: And Mr. Baksa, I'm looking at the teacher's
 [22] version of the biology textbook, but I am
 [23] fairly confident that in this respect it's
 [24] similar to the student's version, that, in
 [25] fact, the heading, as you start your study of

[1] evolution, is Darwin's Theory of Evolution.

[2] A: Um-hum.

[3] Q: So in that respect it's not misleading the
 [4] students at all, it's in marquee and klieg
 [5] lights presented as a theory, correct?

[6] A: I have no idea.

[7] Q: Do you understand intelligent design to be a
 [8] scientific theory?

[9] A: I understand professors like Michael Behe at
 [10] Lehigh University are either proponents or
 [11] researchers for intelligent design. My
 [12] knowledge of intelligent design and the
 [13] scientific community is fairly limited. I
 [14] haven't been exploring it for a long period of
 [15] time. So I don't know that I could fully
 [16] answer that other than knowing a few
 [17] individuals who are involved in intelligent
 [18] design.

[19] Q: Do you understand that there's a distinction
 [20] between something that scientists say and
 [21] something being a scientific theory? Not
 [22] everything scientists say is a scientific
 [23] theory. You would agree with that, right?

[24] A: Okay.

[25] Q: Do you agree with that or do you just not know

[1] one way or the other?

[2] A: I mean, I'm not in a position to judge what the
 [3] scientific community, how they — the standards
 [4] they set and the judgments they make about
 [5] their colleagues and their research and the
 [6] status it has. I just have no knowledge of
 [7] that.

[8] Q: And how would you — what would it take for you
 [9] to feel qualified to answer the question
 [10] whether intelligent design is a scientific
 [11] theory? What expertise would you feel you
 [12] would have to have or what resource would you
 [13] feel you would need to look to to make a
 [14] determination for yourself whether intelligent
 [15] design is a scientific theory?

[16] A: I don't know.

[17] MR. GILLEN: Objection. It calls for
 [18] speculation. If you can answer, do.

[19] A: Yeah, I don't know.

BY MR. ROTHSCHILD:

[20] Q: Do you feel that you could make a judgment
 [21] about whether intelligent design is, in fact, a
 [22] scientific theory by listening to the opinions
 [23] of the members of the Dover Area School Board?

[25] A: I wasn't making — I wasn't asked to make a

[1] A: I believe my secretary Amy Aumen formatted it.

[2] Q: Do you know whether Mr. Nilsen created this on
 [3] his own or with the aid of others?

[4] A: I believe he created this in conjunction with
 [5] Thomas More.

[6] Q: If you turn to the second page there is a
 [7] frequently asked question, What is the theory
 [8] of Intelligent Design. And it says, The theory
 [9] of intelligent design is a scientific theory
 [10] that differs from Darwin's view and is endorsed
 [11] by a growing number of credible scientists.

[12] Do you know what the Dover Area School
 [13] District based its assertion that intelligent
 [14] design is a scientific theory on?

[15] A: No.

[16] Q: Going back to the development of curriculum.
 [17] Out of this August meeting you had taken on the
 [18] task to develop an edition to the curriculum
 [19] with the teachers, correct?

[20] A: Yes.

[21] Q: And did that, in fact, occur?

[22] A: Yes.

[23] Q: And in terms of who actually created the text
 [24] for it, who did that, you, the teachers or
 [25] both?

[1] judgment. What I was asked to do was to work
 [2] with the board curriculum committee and the
 [3] whole board and the teachers to develop
 [4] language that was agreeable in the curriculum,
 [5] to find a textbook that was agreeable to both
 [6] and to develop a statement that would be read
 [7] to the students that would be agreeable to them
 [8] and that was my role.

[9] MR. ROTHSCHILD: Can we mark this as an
 [10] exhibit, please?

[11] (P Deposition Exhibit Number 19 marked for
 [12] identification.)

BY MR. ROTHSCHILD:

[13] Q: Do you recognize the document we've marked as
 [14] P-19?

[15] A: Yes.

[16] Q: And what is it?

[17] A: This is a news release that the district sent
 [18] to all of our residents.

[19] Q: And who prepared this document?

[20] A: Dr. Nilsen.

[21] Q: Did you have any involvement with it?

[22] A: No.

[23] Q: Do you know if anybody else had any involvement
 [24] with it?

[1] A: I wrote a first draft and I gave it to the
 [2] teachers.

[3] (P Deposition Exhibit Numbers 20 and 21
 [4] marked for identification.)

BY MR. ROTHSCHILD:

[5] Q: Do you recognize the two exhibits we've marked
 [6] as 20 and 21?

[7] A: 20 and 21? I don't have those.

[8] Q: Exhibits 20 and 21.

[9] MR. GILLEN: Yes, you do.

[10] A: Oh, oh.

BY MR. ROTHSCHILD:

[11] Q: And are these the product of your work with the
 [12] science department on developing a modification
 [13] to the biology curriculum?

[14] A: Yes, but not entirely.

[15] Q: And what's missing?

[16] A: There's another teacher draft.

[17] Q: And chronologically here where does that
 [18] teacher draft fall, before September 20th,
 [19] before September 21st?

[20] A: It would be a draft created on October 18th.

[21] Q: October 18th, okay. So up till — sorry, I'll
 [22] back up. Am I correct that the documents we're
 [23] looking at as 20 and 21 are identical except